

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MICHELLE ANDERSON, an individual, on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

TRAVELEX INSURANCE SERVICES INC.
and TRANSAMERICA CASUALTY
INSURANCE COMPANY,

Defendants.

Case No. 8:18-cv-00362-JMG-SMB

**DEFENDANTS' MOTION TO
CERTIFY THE COURT'S MARCH 20,
2020 ORDER FOR INTERLOCUTORY
APPEAL PURSUANT TO 28 U.S.C.
§ 1292(b), AND FOR A STAY OF
PROCEEDINGS**

Defendants Travelex Insurance Services, Inc. ("TIS") and Transamerica Casualty Insurance Company ("Transamerica") (collectively, "Defendants") hereby move to certify the Court's Order dated March 20, 2020 (Document No. 82) (the "March 20, 2020 Order" or "Order") for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), and to stay these proceedings pending resolution by the Eighth Circuit of the petition for appeal. In support of this Motion, Defendants expressly incorporate the accompanying Memorandum of Law, as well as the Declaration of Sally G. Dunlap being filed as an attachment to Defendants' Index of Evidence contemporaneously with this Motion. In further support of this Motion, Defendants state the following:

1. On March 20, 2020, the Court entered its Order denying Defendants' Motion to Dismiss Certain Claims for Lack of Article III Standing (Document Nos. 65, 66) (the "Motion to Dismiss"). In the Motion to Dismiss, Defendants argued that Plaintiff's claims on behalf of purchasers of travel protection plans that she did not herself purchase, were due to be dismissed for lack of Article III standing. In its Order, the Court denied the Motion to Dismiss, recognizing

a tension in the law and adopting the “class certification approach” argued by Plaintiff, requiring Plaintiff to show only that she has individual standing with respect to her own claim.

2. Given the unsettled legal issue raised by the Motion to Dismiss and recognized in the Court’s Order, this Motion requests that the Court certify that its Order meets the three factors under 28 U.S.C. § 1292(b) to warrant an interlocutory appeal. *See* 28 U.S.C. § 1292(b) (a district court may certify for interlocutory appeal an order that “involves a controlling question of law as to which there is substantial ground for difference of opinion,” when “an immediate appeal from the order may materially advance the ultimate termination of the litigation”). As set forth herein and in Defendants’ accompanying brief, the Order meets the three prerequisites for 1292(b) certification.

3. First, the Order addresses a pure question of law related to the scope of Article III’s standing requirement in a case filed as a class action. This question of law is “controlling,” because its resolution on appeal would “materially affect the outcome of the litigation in the district court.” *See Emerson Elec. Co. v. Yeo*, 2013 WL 440578, at *2 (E.D. Mo. Feb. 5, 2013). Whether the Plaintiff has standing to begin adjudicating claims on behalf of millions of persons who purchased different plans than the plan she purchased, through more than 200 different retail and wholesale channels, is controlled by the issue addressed in the Court’s Order. The first factor under § 1292(b) is therefore satisfied.

4. Second, the Order satisfies the requirement that there be “a substantial ground for difference of opinion.” The Order deepens a significant split among the district courts within the Eighth Circuit regarding a class standing issue that the Order acknowledged was subject to “tension” in the law. Order at 5. Additionally, the decisions by the Eighth Circuit that relate to the standing of a class representative have been interpreted by the district courts as conflicting,

and as this Court observed, the Eighth Circuit has never directly addressed the particular issue in this case. *See id.*

5. Third, an immediate appeal from the Order would materially advance the ultimate termination of this case. The appeal of the Order will determine whether this litigation addresses a potential class derived from 27,120 customers of the simple airfare-only Just Air Plan purchased by Plaintiff, or whether the litigation will involve a potential class derived from approximately 5.7 million customers of 221 varieties of plans purchased through all types of travel retailers, including brick and mortar travel agencies, online travel agencies, travel aggregators, tour operators, cruise lines, time shares, and others. This massive difference in the scope of the putative class would impact every aspect of this case, including the complexity of discovery, experts, class certification proceedings, dispositive motions, and trial. Accordingly, because the three requirements of 28 U.S.C. § 1292(b) are satisfied, the Court should grant this Motion and certify its Order for interlocutory appeal.

6. Additionally, the Court should exercise its inherent power to stay this case pending an appeal because (1) a stay would conserve resources and not unduly prejudice or present a “clear tactical disadvantage” to Plaintiff; (2) a stay will simplify the issues; and (3) the discovery phase is not complete and no trial date has been set. *See Schwendimann v. Arkwright Advanced Coating, Inc.*, 2012 WL 5389674, at *5 (D. Minn. Nov. 2, 2012).

WHEREFORE, Defendants Travelex Insurance Services, Inc. and Transamerica Casualty Insurance Company respectfully request that the Court grant this Motion and enter an order amending and certifying the March 20, 2020 Order for appeal pursuant to 28 U.S.C. § 1292(b), and entering a stay of proceedings pending resolution of the appeal.

Dated: April 10, 2020

Respectfully submitted,

/s/ Markham R. Leventhal

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on the following counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF:

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